

90/004752

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NEW AGE PRODUCTS, INC.,

Case No. 96 2129 J CGA

Plaintiff,

DECLARATION OF
PAUL K. SO

v

PROGRESSIVE INTERNATIONAL
CORPORATION,

Defendant.

PROGRESSIVE INTERNATIONAL
CORPORATION,

Counterclaimant,

v

NEW AGE PRODUCTS, INC.,

Counterdefendant.

I, Paul K. So, do declare that:

1. Attached is my curriculum vitae (Exhibit 1).
2. I am familiar with various reference literature used in the plastics field and in particular with the publication "Modern

1 Plastics Encyclopedia" which is issued annually and is relied on
2 by those in the plastics field as a reference for various matters
3 of interest in this field, including to determine the range of
4 mechanical properties of the types of plastic commercially
5 available in the United States.

6 3. The "Modern Plastics Encyclopedia" is a compilation of
7 the specifications of the various resin manufacturers at or about
8 the date of issue of the particular version.

9 4. I have reviewed U. S. Patent No. 5,472,790 and also the
10 polypropylene entries from the October 1991 issue of "Modern
11 Plastics Encyclopedia".

12 5. The patent describes extruded sheets of polypropylene,
13 and more particularly of a copolymer polypropylene having a
14 Rockwell hardness in the range of 72-90 (no Rockwell scale
15 specified) and flexural modulus in the range of 55,000-200,000
16 psi. It is uncertain what Rockwell hardness is being specified in
17 the absence of a scale designation.

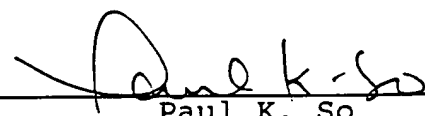
18 6. The October 1991 issue of "Modern Plastics Encyclopedia"
19 (pages 414-417, a true copy attached as Exhibit 2) lists
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21 from Rockwell R80-R102 for homopolymer polypropylene and R65-R96
22 for copolymer polypropylene, and flexural modulus values in the
23 range of 170,000-250,000 psi for homopolymer polypropylene and
24 130,000-200,000 psi for copolymer polypropylene.

25 7. The hardness range of 72-90 recited in the patent (even
26 if it were assumed that an R scale was intended) is entirely
27 encompassed within the range of hardnesses of copolymer
28 polypropylene listed as available in 1991, and the flexural

1 modulus range of 55,000-200,000 psi includes the entire range of
2 then commercially available copolymer polypropylene. Thus, the
3 ranges specified do not define a "unique combination" or a special
4 grade of polypropylene, but rather the characteristics of most
5 commonly available polypropylene.

6 8. Sheets of copolymer polypropylene plastic having a
7 hardness in the range of hardnesses of R70-R92 would not exhibit
8 any appreciable difference in performance as a flexible cutting
9 board over the portions of the range of the then available
10 copolymer polypropylene, i.e., R65-R96, and hence there is nothing
11 critical about the range of R70-R92 of a copolymer polypropylene
12 used as a flexible cutting board.

13 I declare under penalty of perjury that the foregoing is true
14 and correct.

15 Executed on Aug 15th, 1997 
16 Paul K. So
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Curriculum Vitae

Paul K. So

Position: President
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Education: Ph. D. Illinois Institute of Technology, 1982.
Metallurgical and Materials Engineering

M. S. Illinois Institute of Technology, 1976.
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B. S. Illinois Institute of Technology, 1971.
Physics

Position Held: 1980-1982 Senior Research Associate, International Harvester

Member: Society of Plastics Engineers

Book Contribution:

"Fractography of Polymers," *Volume 2: Engineering Plastics, Engineered Materials Handbook*, ASM, Metals Park, Ohio, 1988.

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6 San Diego, California 92101
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8 Attorneys for Plaintiff, New Age Products, Inc.

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IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

NEW AGE PRODUCTS, INC.,

Plaintiff,

v.

PROGRESSIVE INTERNATIONAL
CORP.,

Defendant.

Civil Action No.96 2129 J CGA

PLAINTIFF'S RESPONSES TO
DEFENDANT'S SECOND
REQUEST FOR ADMISSIONS

Plaintiff New Age Products, Inc. ("New Age") submits its responses to
Defendant's Second Request for Admissions propounded by Defendant
Progressive International Corp. ("Progressive") as follows:

Request for Admission No. 6

Prior to December 22, 1991, Witt Plastics, inc. sold to Schneider Plastic over
four thousand 36" X 47" sheets of extruded polypropylene of .010 inch thickness
and constructed of Rexene 9231 plastic resin.

Answer

Admitted.

Request for Admission No. 7

The patent application U.S. Serial No. 994,665, filed on December 22, 1992
described sheet thicknesses of .008 to .030 inch and did not describe or mention
thickness over .030 inch as being suitable for the invention.

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Answer

Admitted.

Dated: July 30, 1997

Respectfully submitted,

BROWN, MARTIN, HALLER & McCLAIN

By: 
Neil F. Martin, Esq.
Kathleen A. Pasulka, Esq.
Lawrence D. Maxwell, Esq.
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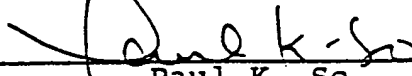
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I, Roderick Thompson, declare and say that:

1. I am the President of Far West Manufacturing, Inc., a California corporation having offices in San Diego, California ("Far West"). Far West is a licensee of U.S. Patent No. 5,472,790 ("the patent"). I am also the inventor named in the patent.

2. Far West's only product is the flexible cutting mat, which it has manufactured and sold since 1995. To the best of my information and belief, this product is within the scope of the claims of the patent in that it is identical to the 11½ inch by 15 inch flexible cutting mat produced by New Age Products, Inc. in all material respects mentioned in the patent with the exception of its color. On that basis, to the best of my information and belief, the product has the following characteristics as described in the patent: It is a plastic sheet made from flat stock material (i.e., having been extruded flat and never having been stored in the form of a roll) between 0.008 and 0.030 inches in thickness, between R72 and R90 in Rockwell hardness, between 75,000 psi and 200,000 psi in flexural modulus, and able to support an article weighing at least five ounces at a distance of at least ten inches from the end at which the mat is held when the mat is flexed into the funnel or trough shape illustrated in Fig. 1 of the patent. This is the flexible cutting mat product to which I refer below.

3. The flexible cutting mat that Far West sells has met with considerable commercial success, and sales continue to grow. The product is sold in units of one cutting mat per package to distributors and retailers. Far West's sales figures for this product, including number of mats sold and their average price, are as follows:

<u>YEAR</u>	<u>UNITS SOLD</u>	<u>AVG. PRICE</u>	<u>TOTAL SALES</u>
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- 3 -

1995	at least 200,000	\$0.95	\$190,000
1996	at least 200,000	\$0.95	\$190,000
1997	at least 400,000	\$0.90	\$360,000

Although the average price was lowered slightly in 1997 in response to competition by an infringer of the patent, the slight \$0.05 change in price could not have caused the doubling of sales. Rather, I believe sales doubled between 1996 and 1997 because customers perceived the merits of the invention as defined in the patent.

4. Far West has not promoted the product to any significant extent. Far West exhibits at one trade show each year, at a cost of about \$3,000. Other than the trade show, Far West spends no money or effort on advertising or any other type of promotion.

5. In spite of relatively low promotional expenditures and a relatively constant price, this product has enjoyed considerable and increasing commercial success.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Date:

1-10-98

Roderick Thompson
RODERICK THOMPSON